UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:	FAA Order No. 2000-20
PHILLIPS BUILDING SUPPLY	Served: August 11, 2000
	Docket No. CP99SO0024 DMS No. FAA-1999-5816[1]

DECISION AND ORDER[2]

Complainant has appealed Administrative Law Judge Burton S. Kolko's initial decision,[3] finding that Phillips Building Supply (Phillips) violated the Hazardous Materials Regulations as alleged in the complaint and assessing a $9,000 civil penalty.[4] In its appeal brief, Complainant argues that the law judge erred in assessing a $9,000 civil penalty, rather than the $20,000 civil penalty Complainant sought. This decision grants

---

[1] Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available through the Department of Transportation's Docket Management System (DMS). Access may be obtained through the following Internet address: http://dms.dot.gov.

[2] The Administrator's civil penalty decisions are available on LEXIS, WestLaw, and other computer databases. They also can be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, *see* 65 Fed. Reg. 47,557, 47,573-47,574 (August 2, 2000).

[3] A copy of the portion of the transcript containing the oral initial decision is attached.

[4] Specifically, 49 C.F.R. §§ 171.2(a); 172.200(a) & 172.202(a)(1); 172.200(a) & 172.202(a)(2); 172.200(a) & 172.202(a)(3); 172.200(a) & 172.202(a)(4); 172.200(a) & 172.202(a)(5); 172.203(k); 172.204(a) or (c)(1); 172.204(c)(2); 172.204(c)(3); 172.301(a); 172.301(b); 172.300(a) & 172.312 (a)(2); 172.400(a); 172.600(c); 172.702(a); 173.24(b)(1); and 173.203. For the text of these regulations, *see* the Appendix.

Complainant's appeal in part and increases the civil penalty from $9,000 to $14,000.[5]

Facts

Phillips Building Supply is a retail company that sells home building supplies in Laurel, Mississippi. Ordinarily, Phillips does not ship hazardous materials. In May 1997, Phillips' assistant manager received a telephone call from a corporate customer in Texas requesting a shipment of Formica glue. (Tr. 68.) Phillips arranged to have another company deliver the glue to the customer, but for some reason, the customer did not receive the glue, even though the customer had been billed for it. (Tr. 69.) The customer needed the glue urgently for an important job. (*Id.*) Trying to meet his customer's needs, Phillips' assistant manager telephoned the supplier again, but the supplier now said it was out of stock.

As a last resort, Phillips' assistant manager decided to fill the customer's order from Phillips' own stock. He took five 1-gallon cans of Formica glue off the shelf, and then, along with Phillips' receiving clerk, he put the cans in a cardboard box, packing it with wadded-up newspapers and paper bags. (Tr. 69, 94.) The receiving clerk shipped the box overnight to the customer in Texas via United Parcel Service (UPS). The clerk mentioned to the driver that the box contained Formica glue. (Tr. 73, 95.) The box was flown aboard a UPS cargo flight that took off from Jackson, Mississippi. (Complainant's Exhibit 1.)

The next day, workers at the UPS sort facility in Louisville, Kentucky discovered the box leaking and notified the FAA. (Complainant's Exhibit 6.) The FAA agent, who

---

[5] A copy of the law judge's initial decision is attached.

went to the UPS facility to investigate, discovered that the box contained five 1-gallon cans of Formica glue, including one leaking can. (Tr. 24.) The box was also emitting noxious fumes. (*Id.*)

Each can was marked "CAUTION, VAPOR HARMFUL" and "WARNING, STORE IN A WELL VENTILATED AREA." The appropriate hazardous material shipping name, "Halogenated Irritating Liquid, NOS [Not Otherwise Specified]," UN-1610, was on the bottom of each can.[6] Also, the appropriate hazardous material label, reading "STORE AWAY OR KEEP AWAY FROM FOOD," was on the back of each can. The FAA investigator testified that Phillips' employees should have realized that they were dealing with hazardous materials because there were warning labels on the cans themselves. (Tr. 45.)

Phillips' employees did not, however, comply with the Hazardous Materials Regulations. They did not place an appropriate hazardous class label on the outer package, and did not mark the proper shipping name, number, and orientation arrows on the box. Proper hazardous materials shipping papers and certifications did not accompany the box. Also, Phillips should have provided emergency response information regarding the glue but failed to do so. Further, the cans of Formica glue were not packaged properly to prevent the contents from spilling or leaking.

The FAA investigator testified that there is a closed ventilation system on an aircraft and that if the glue leaked aboard the aircraft, the vapors would circulate continuously throughout the aircraft, nauseating the crewmembers and irritating their

---

[6] The hazard class for the material was 6.1 and the packing group was III. (Tr. 34, 39; Complainant's Exhibit 8 at 6.)

eyes. He testified that it was possible that the crewmembers might "succumb" to the fumes. (Tr. 43, 44.) Also, because the box was not properly labeled or marked, the UPS personnel did not know that it was a health hazard to store it next to packages containing food. (Tr. 44.) In fact, the product did leak in the UPS facility onto packages containing food. (*Id.*) Further, because there were no arrows on the box, the UPS personnel did not realize that they needed to orient the box a certain way to reduce the chance of leakage. (*Id.*)

After the incident, UPS volunteered to train Phillips' employees in the handling of hazardous materials. Phillips' assistant manager and receiving clerk received the training, which lasted between 1 and 2 hours. (Tr. 77-78, 84, 97.)

During closing argument, Complainant argued that the employees had not had sufficient training regarding the transportation of hazardous materials to prevent future hazardous materials incidents. The agency attorney noted that, as both Phillips' employees testified, even after the training, they were not familiar with Title 49 of the Code of Federal Regulations, which contains the Hazardous Materials Regulations. (Tr. 107.) Counsel for Phillips argued, however, that while the employees may not know what Title 49 is, they do know enough not to ship hazardous materials again, and to that extent, Phillips had taken corrective measures. (Tr. 108.) Phillips' counsel also stated that he had informed the company that it needed to provide some additional training. (*Id.*) He argued that although there were numerous alleged violations, it was in essence one act and one violation. (Tr. 109.) He also pointed out that his client had no previous violations. (Tr. 110.)

The Law Judge's Initial Decision

After the hearing, the law judge issued his oral initial decision from the bench. The law judge found that Phillips violated the regulations alleged in the complaint, noting that the parties had practically stipulated to them. Thus, in the law judge's view, the case "boiled down" to determining the appropriate civil penalty amount. (Tr. 113.)

The law judge noted that one must weigh the risk posed by undeclared hazardous materials against other factors, such as the type of shipper, the gravity of the violation, and the shipper's violation history, if any. (Tr. 112.) Fortunately, the law judge said, the spill occurred on the ground rather than on board an airplane. (Tr. 114.) He agreed with Complainant that the statutory minimum civil penalty of $250 (multiplied by 18 violations) would lead to a civil penalty that was too low. He decided to double the minimum statutory penalty of $250, which would be $500, and to multiply it by 18 violations, resulting in a civil penalty of $9,000. (Tr. 115.)

The law judge reasoned as follows. A company's mere declaration that it is not going to handle hazardous materials is insufficient because company policies can always change. This is why the case law gives more credit to a substantial training course with remedial updates, which Phillips had not provided to its employees. (Tr. 115.) But, the law judge said, at least Phillips had made a first effort at training, which was why he regarded the $20,000 penalty requested by Complainant as too high. The law judge assessed a $9,000 civil penalty, explaining that $9,000 would have the appropriate "bite" or deterrent effect. He stated his belief that an ordinary person would wince if he or she heard that the penalty for shipping a few cans of glue was $9,000. (*Id.*)

The law judge noted that even though ignorance of the law is no excuse, Phillips'

employees committed the violations without knowing what would happen, and Phillips had promised not to ship hazardous materials any more. (Tr. 115-16.) The law judge also noted that Phillips' counsel, during closing argument, offered that his client would undertake further training to bolster Phillips' pledge not to ship hazardous materials again. (Tr. 116.) The law judge said he accepted Phillips' offer on Complainant's behalf. He asked Phillips to keep Complainant advised of any further training courses its employees took. (*Id.*) Finally, the law judge stated that reasonable people, hearing the same facts, might assess a higher or lower penalty, depending on whether they gave more weight to the damage that hazardous materials can cause or to the fact that Phillips ordinarily does not ship hazardous materials. (Tr. 117.)

Complainant's Appeal

Complainant has filed an appeal challenging the $9,000 sanction imposed by the law judge. Complainant argues that the plain language of the Federal hazardous materials law contemplates a civil penalty for each violation, and that Congress intended substantial penalties for violations of the law.[7] Complainant also argues that its penalty determination is a matter of prosecutorial discretion and that $20,000 was appropriate in this case.

Furthermore, Complainant contends that the law judge used several improper factors to reduce its proposed penalty: Phillips' alleged lack of knowledge; its effort at training; its decision not to ship hazardous materials; and its violation-free history.

---

[7] Although Complainant argued that the maximum civil penalty was $25,000, the maximum civil penalty was increased to $27,500 effective January 21, 1997, due to inflation. 14 C.F.R. § 13.305(d). The incident in this case occurred in May of 1997.

Finally, Complainant argues the law judge erred by determining the penalty on a *pro rata* basis.

Phillips' Reply

In its reply brief, Phillips points out that the Rules of Practice place the burden of proving the appropriate sanction amount upon Complainant. Phillips argues that Complainant has provided no proof that $20,000 is an appropriate civil penalty. Thus, according to Phillips, Complainant is trying improperly to shift the burden of proof onto Phillips and even onto the law judge.

Phillips further argues that while Complainant alleged 18 separate violations, it committed only one act – that of shipping a box of Formica glue without complying with the Hazardous Materials Regulations. Relying on In the Matter of Carr, FAA Order No. 1998-2 at 12-14 (March 12, 1998), Phillips argues that Complainant inappropriately "piled on" violations by counting regulations that are simply more specific versions of the general regulation. Phillips contends that it was well within the law judge's discretion to assess a $9,000 civil penalty for one violation.

In support of the $9,000 penalty, Phillips argues that:

- It shipped only a few cans of glue;
- The glue was shipped by an employee "totally without knowledge of what would happen" (Tr. 115);
- The total cleanup cost was only $100 (Complainant's Exhibit 6);
- There were no injuries to any person or property; and
- Phillips has no history of violations.

Phillips also cites In the Matter of TCI Corporation, FAA Order No. 1992-77 at

18 (December 22, 1992), for the proposition that a respondent's unfamiliarity with the hazardous materials regulations is a factor to consider in determining the level of culpability (and therefore, the sanction amount). Phillips acknowledges that the same case states that "a person who offers hazardous materials for the first time and is unfamiliar with the [Hazardous Materials Regulations] probably deserves more than a minimal sanction. TCI Corporation, FAA Order No. 1992-77 at 20. Phillips points out, however, that the $9,000 sanction assessed by the law judge is more than a minimal sanction; in fact, it is double the minimum sanction.

Analysis

1. Burden of Proof

While Complainant argues that its penalty determination is a matter of prosecutorial discretion, Phillips is correct that under the Rules of Practice, Complainant bears the burden of proving the appropriateness of the civil penalty. 14 C.F.R. § 13.224(a) provides: "Except in the case of an affirmative defense, the burden of proof is on the agency."[8] *See* In the Matter of Stout, FAA Order No. 1998-12 at 12 (June 16, 1998), stating that "Complainant bore the burden of establishing not only the violations, but also the appropriate sanction amount" and In the Matter of Toyota Motor Sales, USA, FAA Order No. 1994-28 at 6-7 (September 30, 1994), stating that "[t]he Rules of Practice expressly place upon the agency attorney the burden of proving the agency's case, which includes establishing the amount of a proposed civil penalty by a preponderance of the evidence in the record."

---

8 While Phillips would bear the burden of proving any affirmative defense such as a harmful effect on its ability to continue to do business, Phillips has not raised such a defense.

2. Errors in the Law Judge's Analysis

There are several errors in the law judge's sanction analysis. First, the law judge erred in using the mathematical, formulaic approach of multiplying the number of violations by a set dollar amount. This approach has been rejected. *See* In the Matter of Midtown Neon Sign, FAA Order No. 1996-26 at 11 (August 13, 1996), stating as follows:

> The law judge's mathematical, formulaic approach of multiplying the number of violations by a set dollar amount is inappropriate. The law judge's approach is not the one mandated by the [hazardous materials] statute. Also, a violation of one regulation may be more or less serious than a violation of another regulation. It is not clear that each regulation deserves an equal penalty amount.[9]

Second, the law judge erred when he stated that he would reduce the $20,000 proposed civil penalty to $9,000 because Phillips had made a first effort at training. Although the law judge was correct that training of Phillips' employees was a corrective measure that would justify a reduction in the civil penalty,[10] the law judge gave too much weight in setting the sanction to the minimal training Phillips' employees received.

---

[9] *See also* In the Matter of Pony Express, FAA Order No. 1994-19 at 2 (June 22, 1994), cited in In the Matter of Midtown Neon Sign, FAA Order No. 1996-26 at 2 (August 13, 1996), stating that "it is the egregiousness of respondent's conduct and not the number of regulations violated that justifies the assessment of the requested ... civil penalty."

[10] In TCI Corporation, FAA Order No. 1992-77 at 26 (December 22, 1992), the Administrator held that although corrective action is not specifically mentioned as a factor to consider in [the Federal hazardous materials law], it may be considered under the category of "such other matters as justice may require." In TCI, the Administrator stated that "the type of corrective action that warrants a significant reduction in civil penalty is action to ensure that hazardous materials will be handled by this respondent in compliance with the [Hazardous Materials Regulations] in the future. For example, if Respondent had sent its employees to hazardous materials training ... then Respondent might have been entitled to a reduction of its civil penalty." (*Id.* at 26-27.) *See also* In the Matter of Toyota Motor Sales, FAA Order No. 1994-28 (September 30, 1994) (to the same effect).

Phillips' own witness, its assistant manager, characterized the training as "cursory." (Tr. 84.) Further, there is nothing in the record indicating that Phillips acted quickly to train its employees after the incident. Thus, Phillips' effort at training justifies only a small adjustment of an otherwise reasonable penalty. Larger adjustments are reserved for corrective measures that are more thorough, immediate, or both.

Third, the law judge erred in reducing the civil penalty based on Phillips' attorney's statement that he advised his client of the need for further training. The law judge stated that he accepted, on Complainant's behalf, the "offer" of Phillips' attorney for the company to conduct further training. However, there is no indication in the record that Phillips had *accepted* its attorney's recommendation to conduct further training. Moreover, further training *after a hearing* would be so long after the incident that it could not be regarded as a mitigating factor. Note too that it would be beyond the authority of the law judge to impose a training requirement as part of the sanction. His authority was limited to imposing a civil penalty.[11]

Finally, the law judge erred in basing his sanction determination in part on Phillips' promise not to ship hazardous materials any more. As Complainant correctly points out, the case law indicates that a promise not to ship hazardous materials is not a

---

11 14 C.F.R. § 13.205(b) provides that: "the administrative law judge shall not ... impose any sanction not specified in this subpart." *See also* the following cases holding that the law judge exceeded his authority in fashioning a sanction: In the Matter of Cato, FAA Order No. 90-33 at 3 (October 11, 1990) (rejecting the law judge's promise to reduce the sanction by an additional $1,000 if, within the next 60 days, the respondent published in a newspaper of general circulation a letter apprising the public of the need to keep weapons out of carry-on luggage); and In the Matter of Degenhardt, FAA Order No. 90-20 at 5 (August 16, 1990) (rejecting the law judge's promise to vacate his initial decision assessing a civil penalty if the respondent published a letter in a local newspaper raising public awareness of the need to ascertain the contents of packages

mitigating factor. *See* In the Matter of TCI Corporation, FAA Order No. 1992-77 at 27 (December 22, 1992) (stating that: "A decision not to handle hazardous materials in the future does not represent the type of positive corrective action that would warrant consideration in determining the penalty. Such a company policy may be changed at any time"). *See also* In the Matter of Toyota Motor Sales, USA, FAA Order No. 1994-28 at 15-17 (September 30, 1994) (to the same effect).

All of these errors led the law judge to assess a sanction that is too low.

3. Statutory Factors

The proper approach in setting the sanction is to consider all the factors required by the Federal hazardous materials law – *i.e.*,

1. the nature, circumstances, extent, and gravity of the violation;
2. with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and
3. other matters that justice requires.

49 U.S.C. § 5123(c).

a. The Violation – Its Nature, Circumstances, Extent, and Gravity

Regarding the nature, circumstances, and gravity of the violation, it has been held repeatedly that undeclared shipments of hazardous materials, "which increase the likelihood of injury, pose a special risk." *See* In the Matter of Midtown Neon Sign Corporation, FAA Order No. 1996-26 at 14 (August 13, 1996) (citing In the Matter of Toyota Motor Sales, USA, FAA Order No. 1994-28 at 13 (September 30, 1994)). Undeclared shipments are "extremely dangerous and can result in loss of life and damage

---

that are carried aboard aircraft).

to property." *Id.* Although Phillips' shipping clerk mentioned to the UPS driver that the box contained Formica glue, she did not indicate that the box contained a hazardous material. Thus, the package, which lacked the proper marking, labeling, shipping papers, and certifications, was still an undeclared shipment.

Regarding the gravity of the violation, the FAA investigator testified that, given the closed ventilation system on an aircraft, if the glue were to leak aboard an aircraft, the vapors would circulate continuously throughout the aircraft, nauseating the crewmembers and irritating their eyes, and possibly even causing them to "succumb" to the fumes. (Tr. 43, 44.) At the same time, while the risk is serious and cannot be ignored, the hazardous material was not one of the most hazardous substances; it was not, for example, flammable, explosive, corrosive, or radioactive.

The package actually leaked, which is an aggravating factor. It leaked onto a package containing food. (Tr. 44.) With proper warning labels, the UPS personnel would have known not to store it near food.

It was a relatively small shipment, and the leak was limited, as reflected by the clean-up costs, which were only $100. There is no indication in the record that the leak occurred on board an aircraft, or that the shipment exceeded the quantity limits for the particular hazardous material.

b. The Violator -- Degree of Culpability, History of Prior Violations, Ability to Pay and Continue to Do Business

As for the violator, Phillips is a business rather than an individual. It is not the manufacturer of the product,[12] but it regularly handles hazardous materials in the course of its business. Prior violations, which would constitute an aggravating factor, are not present. Phillips has not alleged that it is unable to pay the civil penalty or that the penalty would have a deleterious effect on its ability to continue to do business.

c. Other Matters that Justice Requires

As discussed above at p. 9, Phillips did take some corrective action. The two employees involved in the incident participated in a UPS training course. While this does not justify a large adjustment in the penalty, it is a mitigating factor.

---

[12] Manufacturers are expected to know completely the nature of their products; thus, if the violator is the manufacturer, there is greater culpability.

Conclusion

Based on all the factors that the Federal hazardous materials law requires to be considered, a civil penalty of $9,000 would be too low. At the same time, given the degree of risk associated with the Formica glue, the training undergone by two employees, and Phillips' degree of culpability, a $20,000 civil penalty is excessive. A $14,000 civil penalty is assessed, which takes into account all the relevant statutory factors, and which should serve as a deterrent.[13]

Complainant's appeal is granted in part and a civil penalty of $14,000 is assessed.

JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 11th day of August, 2000.

---

[13] As set forth in 49 U.S.C. § 5123(c). *See* p. 11 above for the factors listed in 49 U.S.C. § 5123(c).

APPENDIX

Section 171.2(a)[14] provides:

No person may offer or accept a hazardous material for transportation in commerce unless that person complies with subpart G of part 107 of this chapter, and the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by this subchapter ....

Section 172.200(a) provides:

Description of hazardous materials required. Except as otherwise provided in this subpart, each person who offers a hazardous material for transportation shall describe the hazardous material on the shipping paper in the manner required by this subpart.

Section 172.202(a)(1)-(5) provides:

(a) The shipping description of a hazardous material on the shipping paper must include:

(1) The proper shipping name prescribed for the material in Column 2 of the § 172.101 Table;

(2) The hazard class or division prescribed for the material as shown in Column 3 of the § 172.101 Table (class names or subsidiary hazard class number may be entered following the numerical hazard class, or following the basic description) ....

(3) The identification number prescribed for the material as shown in Column 4 of the § 172.101 Table;

(4) The packing group, in Roman numerals, prescribed for the material in column 5 of the § 172.101 table, if any. ....; and

(5) ... [T]he total quantity ..., including the unit of measurement, of the hazardous material covered by the description ....

Section 172.203(k) provides:

(k) *Technical names for "n.o.s." and other generic descriptions.* Unless otherwise excepted, if a material is described on a shipping paper by one of the proper shipping names listed in paragraph (k)(3) of this

---

[14] All citations are to Title 49 of the Code of Federal Regulations. (The Hazardous Materials Regulations are contained in 49 C.F.R. Parts 171-180.)

section, the technical name of the hazardous material must be entered in parentheses in association with the basic description. ....

Section 172.204(a) and (c)(1)-(3) provide:

(a) ... [E]ach person who offers a hazardous material for transportation shall certify that the material is offered for transportation in accordance with this subchapter by printing ... on the shipping paper containing the required shipping description the certification contained in paragraph (a)(1) of this section or the certification (declaration) containing the language contained in paragraph (a)(2) of this section.

(1) "This is to certify that the above-named materials are properly classified, described, packaged, marked, and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation."

(2) "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations."

...

(c) *Transportation by air—*

(1) *General.* Certification containing the following language may be used in place of the certification required by paragraph (a) of this section:

I hereby certify that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked and labeled, and in proper condition for carriage by air according to applicable national governmental regulations.

(2) *Certificate in duplicate.* Each person who offers a hazardous material to an aircraft operator for transportation by air shall provide two copies of the certification required in this section. ....

(3) *Passenger and cargo aircraft.* Each person who offers for transportation by air a hazardous material authorized for air transportation shall add to the certification required in this section the following statement:

This shipment is within the limitations prescribed for passenger aircraft/cargo aircraft only (delete nonapplicable).

Section 172.300(a) provides:

(a) Each person who offers a hazardous material for transportation shall mark each package, freight container, and transport vehicle

containing the hazardous material in the manner required by this subpart.

Section 172.301(a) & (b) provide, in relevant part:

(a) *Proper shipping name and identification number.* ... [E]ach person who offers for transportation a hazardous material in a non-bulk packaging shall mark the package with the proper shipping name and identification number (preceded by "UN" or "NA," as appropriate) for the material as shown in the § 172.101 table. ....

(b) *Technical names.* In addition to the marking required by paragraph (a) of this section, each non-bulk packaging containing hazardous materials subject tot the provisions of § 172.203(k) of this part shall be marked with the technical name in parentheses in association with the proper shipping name .....

Section 172.312(a)(2) provides, in relevant part:

(a) ... [E]ach non-bulk combination package having inner packagings containing liquid hazardous materials must be:

...

(2) Legibly marked, with package orientation markings that conform pictorially to ISO Standard 780-11985, on two opposite vertical sides of the package with the arrows pointing in the correct upright direction. ....

Section 172.400(a) provides, in relevant part:

(a) ... [E]ach person who offers for transportation or transports a hazardous material in any of the following packages or containment devices, shall label the package or containment device with the labels specified for the material in the § 172.101 Table and in this subpart ....

Section 172.600(c) provides, in relevant part:

(c) *General requirements.* No person to whom this subpart applies may offer for transportation ... a hazardous material unless:

(1) Emergency response information conforming to this subpart is immediately available for use at all times the hazardous material is present ....

Section 172.702(a) provides:

(a) A hazmat employer shall ensure that each of its hazmat employees is trained in accordance with the requirements prescribed in this subpart.

Section 173.24(b)(1) provides, in relevant part:

(b) Each package used for the shipment of hazardous materials under this subchapter shall be designed, constructed, maintained, filled, its contents so limited, and closed, so that under conditions normally incident to transportation—

(1) ... [T]here will be no identifiable (without the use of instruments) release of hazardous materials to the environment.

Section 173.203 provides, in relevant part:

(a) When § 172.101 of this subchapter specifies that a liquid hazardous material be packaged under this section, only non-bulk packagings prescribed in this section may be used for its transportation. Each packaging must conform to the general packaging requirements of subpart B of part 173, to the requirements of part 178 of this subchapter at the Packing Group I, II or III performance level, and to the requirements of the special provisions of column 7 of the § 172.101 table. ...